

MANAGEMENT OF CONFLICT OF INTEREST IN THE PUBLIC SECTOR IN LITHUANIA: THEORY AND PRACTICE

Abstract

Purpose – The purpose of this paper is to analyse the nature and the concept of conflict of interest, legal and ethical issues of its management in the public sector in Lithuania.

Design/methodology/approach – The paper presents an overview of selected scientific literature and legal acts on the concept of conflict of interest in the public sector in Lithuania and peculiarities of its management. The analysis also focuses on the Chief Official Ethics Commission's role managing conflicts of interest, so for this reason statistical data analysis of the COEC activities is presented separately.

Findings – The analysis has shown that as one of the major anti-corruption institution in Lithuania the Chief Official Ethics Commission supervises transparency of civil service activities and decisions, implements measures on the prevention of breaches of institutional ethics. The growing number of claims and notifications received by the COEC not only shows the growing trust in this institution, but also limits the proper implementation of its mission. For this reason the COEC shall concentrate more on preventive measures, which in the future may have positive effect not only on reducing the number of violations of the Law on the Adjustment of Public and Private Interests in the Civil Service the Code of Conduct for State Politicians or any other legal act regulating the norms of official ethics, but also insubstantial complaints.

Research limitations/implications – This research paper is the introductory part of the broader research performed by the authors on the management of conflict of interest in the public sector in Lithuania. The authors will provide a more detailed conflict of interest management analysis and not discussed legal and ethical aspects in their future scientific articles.

Practical implications – The findings will contribute to the better understanding of the concept of the management of conflict of interest and Chief Official Ethics Commission's role regulating conflicts of interest in the civil service in Lithuania.

Originality/Value – The research paper is the first paper in Lithuania investigating legal and ethical issues of the management of conflict of interest in the public sector in Lithuania and Chief Official Ethics Commission's role regulating conflicts of interest in the civil service in Lithuania.

Keywords: conflict of interest management, legal and ethical problems, Chief Official Ethics Commission.

Research type: Research paper.

JEL classification:

M0 – Business Administration and Business Economics; Marketing; Accounting; Personnel Economics; General

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Introduction

It is constantly emphasized that the main goal of the public sector or civil service is to implement the state policy in stable, seamless and professional way as well as to serve the society effectively and responsibly (Kernaghan, Langford 1990; OECD 2003; Byron 2003; OECD 2005; Palidauskaite 2005; Boyce 2009 et al.).

In order to make such activity ethic, clear and in order to protect the society's interests, it is firstly necessary to seek to avoid the conflict of public and private interests on the basis of legal and ethical regulation of the conflict of interest. In case of such conflict it is appropriate to seek to identify it timely and correctly so that later it would be possible to choose the most efficient ways for solving the conflict or managerial measures to appease or eliminate this conflict (Boyce 2009; Herbert et al. 2001; Longstaff 1995 et al.).

The Republic of Lithuania law on the coordination of public and private interests in civil service provides that in order to guarantee the supremacy of public interests, civil servants must:

- „...1) carry out official duties impartially, fairly and properly;
- 2) avoid the conflict of interest in accordance to the procedure and measures established by laws;
- 3) not use duties to gain personal benefit;
- 4) follow laws and the principle of equality of all persons when making decisions;
- 5) not use and not allow to use official or other activity-related information in the procedure and extent different to the one provided by laws;
- 6) not use and not allow to use any state property as well as the property rented to the state for other than official activity“ (Law on the Adjustment of Public and Private Interests in the Civil Service of the Republic of Lithuania, 1997).

However, the implementation of these principles is not always efficient. In order to make publicly condemned, unacceptable and immoral persons, behavior disappear, it is not only necessary to determine explicit rules, clear procedures and efficient sanctions, but also to guarantee that they are implemented (Langford 1991; Bruce 1996). Otherwise. the created legal norms will be inefficient and there will be legal nihilism mood in the society which has recently been clearly noticed in Lithuania as well.

It is extremely important to timely and correctly identify whether the conflict of interest really exists and causes or may cause dangerous circumstances in relation to public interest. It is notable that the conflict of public and private interests is not caused by the existence of the private interest, but the collision and incompatibility of public and private interests (Cerrillo-i-Martínez 2016). Conflict occurs when this private interest in a certain situation has direct or indirect impact on the performed official duties.

The **purpose** of the article is to analyse the nature and the concept of the conflict of interest and the principles of its management in the public sector in Lithuania in legal and ethical context.

In order to achieve the purpose, the following **objectives** were raised:

1. to analyze the content and nature of the conflict of interest;
2. to analyze theoretical conflict management aspects and arising problems;
3. to assess activities and the role of the Chief Official Ethics Commission regulating conflicts of interest in the civil service in Lithuania and ensuring that holders of public office make decisions solely in terms of the public interests.

The following key **methods** were used in the article: analysis of legal and scientific literature, comparative analysis.

Theoretical occurrence assumptions of conflict of interest and stages of its process

The term “conflict” comes from a Latin word “conflictus”, which means collision. The interests, aims, attitudes of two or more parties collide or are opposed in every conflict situation. The Republic of Lithuania law on the coordination of public and private interests in civil service defines the conflict as a situation when a person working in civil or municipal service must make or participate in making a decision or fulfill commission related to his/her private interests. Chief institutional ethics commission defines conflicts as a situation when a person performing his/her duties must execute a certain action and the action (activity) is not only related to his/her duties but also to his/her private interest (*Law on the Adjustment of Public and Private Interests in the Civil Service of the Republic of Lithuania 1997*). General Lithuanian encyclopedia indicates that (General Lithuanian Encyclopaedia 2006) a conflict is a collision of opposite aims, interests, positions, opinions or attitudes, serious disagreement when a person is overwhelmed with unpleasant feelings or experiences. Conflict of interest is attributed to the type of a social conflict. According to the “Guide to the management of conflict of interest in public sector”, the conflict of interest includes the conflict between the performance of a civil servant’s duties and his/her responsibility to serve public interests, and private interests of a civil servant. Conflict of interest can arise due to avoidance of personal loss as well as due to obtaining of financial or other personal advantage (Carson 1994; Davis 2001; Dorn 2011). Other encyclopedias and dictionaries define the concept of conflict of interest similarly [5], (International Encyclopedia of Social Sciences 1972; Lexicon of Terms and Concepts in Public Administration 1994; Dictionary of Business Terms, 2007). It is noticed that the aforementioned definitions distinguish two main aspects in the conflict of interest – official duties, which guarantee the satisfaction of the public interest, and personal interest which may interfere with fair and transparent service to the public interest.

The concept of the conflict of interest includes two main types of interest – public and private. The Republic of Lithuania law on the coordination of public and private interests in civil service defines the public interest as “... the society’s interest in impartial and fair decisions of persons working in the civil service”. Meanwhile private interests are “... personal property or non-pecuniary interest of a candidate or person working in the civil service (or his/her relative or family member), which may have impact on decisions when performing official duties”. When these interests collide, unwanted and removable conflict of interest occurs – “...a situation when a person working in civil service must make or participate in making a decision or fulfil commission related to his/her private interests” (*Law on the Adjustment of Public and Private Interests in the Civil Service of the Republic of Lithuania 1997*).

The aim of the law on the coordination of public and private interests in civil service and other legal acts is to prevent civil servants from obtaining material or other benefit when performing official action or official duties, prevent their relatives or acquaintances from profiting due to such activity or status so that they are treated more favourably or gain opportunity to use the institution’s confidential information. This and other laws (*Law on Legal Protection of Personal Data of the Republic of Lithuania 1996; Code of Criminal Procedure of the Republic of Lithuania 2002; Law on Electronic Communication of the Republic of Lithuania 2004; Law on Corruption Prevention of the Republic of Lithuania 2002; Law on Lobbying Activities of the Republic of Lithuania 2000; Law on Operational Activities of the Republic of Lithuania 2002; Law of the Republic of Lithuania on the Protection of Criminal Process and Operational Activity Participants, Officials of Justice and Law Enforcement Institutions from Criminal Impact 2004; Law on Electronic Communication of the Republic of Lithuania 2004; Law on Civil Service of the Republic of Lithuania 1999; Law on Public*

Administration of the Republic of Lithuania 1999; *Law on the Adjustment of Public and Private Interests in the Civil Service of the Republic of Lithuania* 1997; Law on the Provisions of Information to the Public of the Republic of Lithuania 1996; Law on the Chief Official Ethics Commission of the Republic of Lithuania 2008; Government Regulation On the Approval of Ethic Rules for Civil Servants 2002) seek to coordinate private interests of civil servants and public interests of the society, to guarantee that decisions made give priority to public interests, objectivity, legitimacy, reduce causes and conditions for the occurrence and spread of corruption. Without laws, it is also regulated by subordinate and various EU legal acts (Directive of the European Parliament and of the Council 1995; Directive of the European Parliament and of the Council 2002; Convention for the Protection of Individuals with regard to *Automatic Processing of Personal Data* 1981 et al.).

In every conflict of interest situation three main stages for this problem solution process can be distinguished in the literature:

1. Identification of the conflict of interest;
2. Selection and implementation of the identified conflict of interest management strategies;
3. Control of the implementation of the identified conflict of interest management strategies (Werhane 1996; OECD 2003; Schneider 2010; Akimceva 2007; Rebecca 2011 et al.).

The aforementioned stages are closely related and make a clear process consisting of certain consistent procedures when making efficient the most efficient decisions about the appeasing or elimination of a specific identified conflict of interest (see pic. 1). (OECD 2005)

After reviewing various literatures, it can be seen that in order to have high quality execution of the aforementioned stages it is necessary to identify the following components. Conflict of interest is possible in various activity areas, between various subjects, in the participation of different conflict participants. The following fields are assessed in their analysis (Kernaghan 1990; Byron 2003; OECD 2003; Herbert 2001 et al.).

- *Activity areas.* It is obvious that not just visitor servicing public administration and municipal institutions encounter the conflict of interest because they frequently need to separately analyze public and private interest specification in political activity, business, sport, academic life, social activity, law enforcement. It certainly does not involve all possible cases of the conflict of interest because studies show that the preconditions for the conflict of interest may also form in a number of other areas.

- *Acting subjects.* Human (or a certain group) activity type, civil responsibility and professional ethics as well as other individual features have direct connection with the conflict of interest. There can be different offense to the public interest in different management or subordination levels although the same employees work in one organization.

- *Conflict of interest participants.* As in most conflicts, two or more parties participate in a number of situations of the conflict of interest. Possible typical pairs of participants are: civil servant – visitor, doctor – patient, lecturer – student, policeman – offender, lawyer – client, etc. Any or both (all) parties can initiate the conflict of interest.

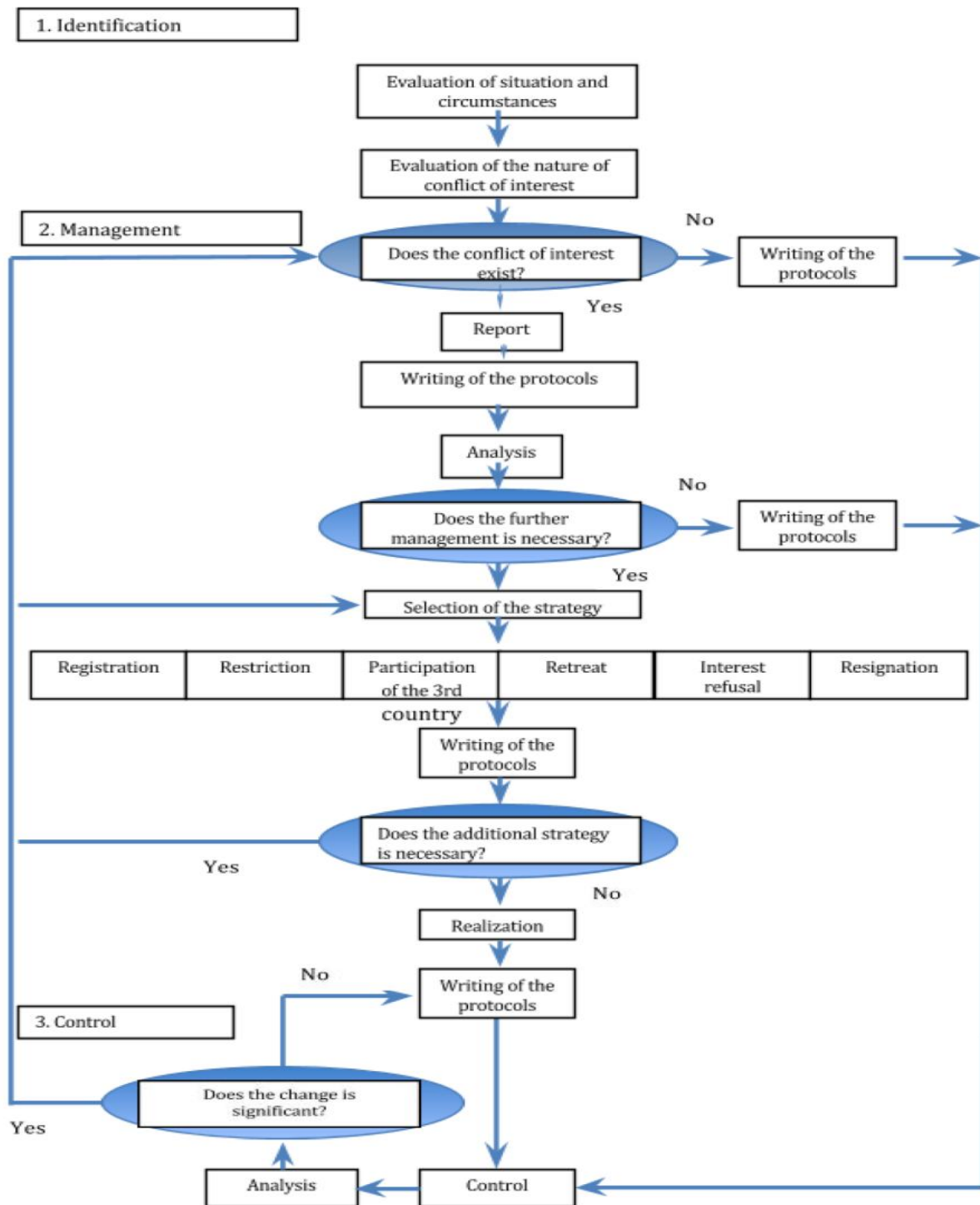


Figure 1. Conflict of interest solution process scheme according to the “Guide to the management of the conflict of interest in public sector”

Conflict of interest identification

Widely speaking, legal and study literature classify the conflict of interest into two groups:

1. material conflict of interest (material conflict of interest manifests in real or professional financial acquisition or loss, other material profit or costs. Material conflict of interest are usually more complicated in respect of their causes and

consequences compared to intangible conflict of interest. Respectively, their management strategies differ in their level of complexity);

2. intangible conflict of interest (intangible conflict of interest usually do not have financial or other material component. Such conflicts may emerge due to personal or family relations, participation in sport, social or cultural life) (Palidauskaite 2005; Akimceva 2007; OECD 2005 etc.).

In a narrow sense, the conflict of interest is divided into three main types:

1. current conflict of interest (a civil servant is influenced by his/her private interests when performing his/her official duties. These are the main conditions for this conflict: existence of private interest; civil servant's awareness of the interest; the impact of the interest relation with official duties and obligations on those duties and obligations);

2. supposed conflict of interest (a civil servant may be influenced by his/her private interests when performing official duties. In this situation, well informed people understand and suspect that a conflict of interest may exist. In order to find out whether such conflict really exists, a further study is necessary);

3. potential conflict of interest (a civil servant may be influenced in future by his/her private interests when performing his/her duties. It is a situation when personal interests of a civil servant are not yet important or do not influence the performance of official duties, but they may become important in future when the position changes) (Carson 1994; Davis 2001; OECD 2003; Boyce 2009 et al.).

Supposed and potential conflict of interest is as much important as a current conflict of interest because these conflicts already lead to assumptions and serious reasons to start to distrust state government, doubt its professionalism, ethics and transparency.

The scale of interests is quite wide – from a bribe to influence a politician to the application of different public policy models (Longstaff 1995; Herber 2001; Rebecca et al. 2011; Galvao et al. 2016; Ochoa 2016). J. Langford (1991) relates the conflict of interest to unethical, corrupt activity, detailing the forms of its manifestation. In their joint work, K. Kernaghan and J.W Langford (1990) distinguished eight situations where there is possible manifestation of the conflict of interest, starting from criminal and ending with administrative conflict situations in respect of seriousness and sanction:

1. *Relations with relatives*, when personal profit is gained at the expense of the civil service, usually by employing relatives, buying/sell their products, this way giving priority to the family interests.

2. *Accepting/giving presents*, when it can cause the conflict of public and private interests. Gifts or other forms of hospitality (entertainment, services, discounts from people who are not relatives) are used to create good and positive impression about the giver. The pursuit of presents or services distorts decision objectivity, the idea of service for the wellbeing of everyone. Lithuanian legal acts strictly forbid to accept/give presents as remuneration for the performance of direct official duties.

3. *Trading of influence*, when there are attempts to influence decision, get or give profit as remuneration for the performance of direct official duties.

4. *Using of state property* for personal needs. In more simple situations, it could be using of state telephones for personal purposes, bringing office supplies home

from office, etc. In more serious situations, it could be using of state vehicles, computers, telephones, etc., for purposes other than work.

5. Using of *confidential information*, when important information is used and passed to third persons for personal interests, and the information was found during the performance of official duties. Information leaking, when confidential information is illegally publicized and spread, can be attributed to this conflict of interest situation.

6. *Work outside institution*, when personal activity/occupation causes conflict related to the performance of official duties. Work elsewhere, including consultancy services, may cause the conflict of interest with direct duties, because the status of a civil servant may become beneficial when carrying out work outside the main workplace. This may cause possibilities and assumptions to increase the authority of another institution. Moreover, there are frequent situations when more effort, power, energy is given to that secondary workplace rather than performing duties in the main one. Professional equipment and governmental services are often used for additional work.

7. *Future employment*, when activity after resignation causes the foundation to use the advantages of a previous work. Future job after resignation in a private organization, with which there were certain official affairs, may be beneficial to that organization – for example knowledge, experience, personal connections.

8. *Accepting/giving bribes*, when civil servant's behavior makes him vulnerable by forcing to use official duties; when such behavior brings mistrust in a state or a certain department, which, in its turn, reduces society's trust in all civil servants. Bribes are illegally accepted money or other valuable offers in exchange for certain civil servant's services related to his/her official duties (Don A. Moore 2005; Davids 2008).

These situations can be called risk areas which may cause conflict of interest. In order to solve conflicts more efficiently, it is important to realize the difference between such conflicts because namely the type of conflict will determine strategies that will be chosen in future and help to appease or eliminate those conflicts.

Selection and implementation of conflict management strategies follow the identification of such conflicts. Perception of the existence of the conflict of public and private interests is the first and one of the main stages in problem solution (Ringeling 2015). Conflict of interest is possible and must be solved by the main aspects which are inter-related and are inseparable from each other in order to find and chose the most efficient way for conflict solution:

1. legal aspect, when efficient state policy and procedures, strictly based on the requirements of legal acts and norms, are applied;
2. ethical aspect, when state code of ethics, based on various ethical norms and rules of conduct, is applied (Akimceva 2007; OECD 2003; OECD 2005, Kaya 2017).

Selection and implementation of management strategies of conflict of interest

Literature provides various ways for solution and management of the conflict of interest, therefore their management strategy selection will depend on the assessment of the following important components:

- nature of conflict;
- situation complexity;
- case stability and difficulty.

Everything (especially public resonant cases) need high quality detailed study and implementation of various conflict of interest management strategies. Certain combinations of these strategies should be usually implemented in practice. Six main conflict of interest management strategies are distinguished:

1. Registration and declaration (Lithuanian legal acts require registration and declaration of private interests from a certain group of people. Declaration of private interests is comparatively peculiar prevention of the conflict of public and private interests in civil service. The COEC sets the declaration form, rules for filling and submission. The law on the coordination of public and private interests in civil service and subordinate acts set forth detailed registration and declaration provisions (*Law on the Adjustment of Public and Private Interests in the Civil Service of the Republic of Lithuania* 1997 et al.);

2. Restriction of interested civil servant's participation (the strategy provides that a civil servant: does not participate in the establishment of certain particularly important criteria or in making decisions; refrains from taking part in debate on a certain issue; refrains from participation in voting on decision proposals; stands back from discussion of proposals or plans; restricts availability to information related to the conflict of interests; refuses access to delicate documents or confidential information related to the conflict of interests).

3. Participation of a third party (the strategy provides that a third independent party participates in a decision-making process, and an auditor observes that the decision-making process is integral and fair);

4. Retreat of an interested civil servant (the strategy provides that a civil servant: retreats from any participation in decision-making process; refrains from any official and informal issue discussion; retreats from a situation when he/she can still try to influence decisions or actions; reorganizes his/her duties and obligations in a non-conflict direction; moves to another project, another company activity area, another company);

5. Refusal of private interest (the strategy provides that a civil servant: liquidates his/her private interest; refuses or does not support his/her private interest – the only case when refusal cannot fit is when the interest is a necessary part of duty qualification, for example, union membership; passes his/her conflict interest to the system of “blind trust” or “blind management” during the conflict existence period. The blind trust system requires that a civil servant passes all his/her rights to dispose of property to the disposition of a competent person or organization under a contract, receiving information about general condition of property);

6. Resignation of interested civil servant (this strategy provides that a civil servant: resigns from his/her post; asks for transfer to another company; early retires, if possible) (Davis 2001; Akimceva 2007; OECD 2005, Ringeling 2015).

No matter what strategy will be selected depending on conflict nature, complexity and stability, decision-making must be clear and fair. There are certain necessary things, which must be recorded in official documents in cases of the conflict of interest:

- various private interests, which may have influence in the performance of official duties and could cause the assumptions for the conflict of interest to occur, must be recorded;
- conflict of interest must be properly informed of and revealed;
- directions for the solution of the conflict of interest must be recorded in writing;
- course of action recording is necessary when selecting possible conflict of interest solution opportunities and organizing agreements about the solution of the conflict of interest;
- implementation stages of the selected management strategy must be registered accordingly.

Protocols allow demonstrating that a certain conflict of interest was properly identified and further managed (OECD 2005; Ochoa 2016, Kaya 2017).

Implementation control of the conflict of interest management strategies

In order to make sure that a chosen solution strategy is suitable before the conflicts of interest are solved, it is necessary to continually analyze and assess the following:

- initial situation which caused the declaration of the conflict of interest;
- presets and management decisions;
- strategy chosen for the solution of the conflict of interest;
- management strategy implementation actions;
- changes in situation which may influence the management strategy;
- others' perception that the conflict of interest has improper and undesirable impact;
- repetitive assessments and management decisions about further management of the conflict of interest;
- management strategy correction and its implementation (Bruce 1996; Byron 2003; Cerrillo-i-Martínez 2016; Kaya 2017 et al.).

If situation changes are quite significant, it may be necessary to start the entire conflict of interest solution process again, i.e. starting with the official identification of a current situation and a conflict of interest before the application of a reviewed management strategy.

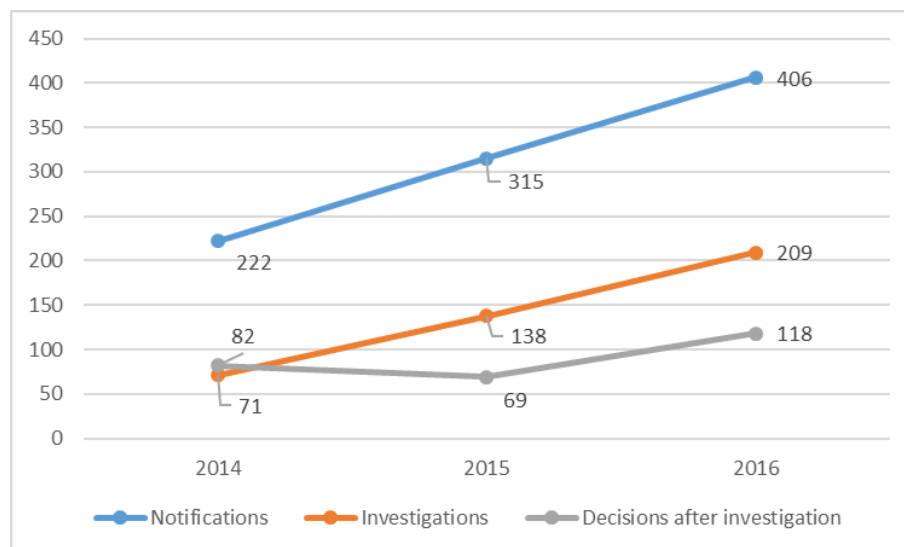
Chief Official Ethics Commission's role managing conflicts of interest in the public sector in Lithuania

The COEC is the major institution performing functions of regulating conflicts of interest in the civil service in Lithuania and ensuring that holders of public office make decisions solely in terms of the public interests (*Law on the Adjustment of Public and Private Interests in the Civil Service of the Republic of Lithuania* 1997). As an anti-corruption institution the COEC supervises transparency of civil service activities and decisions, implements measures on the prevention of breaches of institutional ethics, controls certain lobbying activities and investigates notifications, complaints and requests of natural and legal persons regarding the conformity of actions of the persons in the civil service with the provisions the Law on the Adjustment of Public and Private Interests in the Civil Service the Code of Conduct for

State Politicians or any other legal act regulating the norms of official ethics (*Law on the Adjustment of Public and Private Interests in the Civil Service of the Republic of Lithuania* 1997, Law on the Chief Official Ethics Commission of the Republic of Lithuania 2008).

Under the the Law on the Adjustment of Public and Private Interests in the Civil Service the COEC is independent while performing its duties and only the Seimas shall exercise parliamentary scrutiny of its activities (Law on the Chief Official Ethics Commission of the Republic of Lithuania 2008). The COEC's independence, impartiality, political neutrality, transparency, openness making its performed investigations and decisions public have singnificant impact on the growth of trust in this institution and increase of notifications, claims and requests addressed to it (*Law on the Adjustment of Public and Private Interests in the Civil Service of the Republic of Lithuania* 1997).

In 2016 the COEC received 2975 notifications, complaints and requests of natural and legal persons regarding the conformity of actions of the persons in the public service with the provisions of the Law on the Adjustment of Public and Private Interests in the Civil Service, the Code of Conduct for State Politicians or any other legal act regulating the norms of official ethics and conduct and the increase was 16 percent compared to 2015 and 28 percent to 2014 (Chief Official Ethics Commission Annual Report 2016). From 2014 to 2016 the number of notifications, received by the COEC increased from 222 to 416 and the number of the COEC decisions to start investigations in 2016 almost tripled compared to 2014 (from 71 to 209) (Chief Official Ethics Commission Annual Report 2016).



Source: created by the authors based on the COEC 2014 – 2016 annual reports

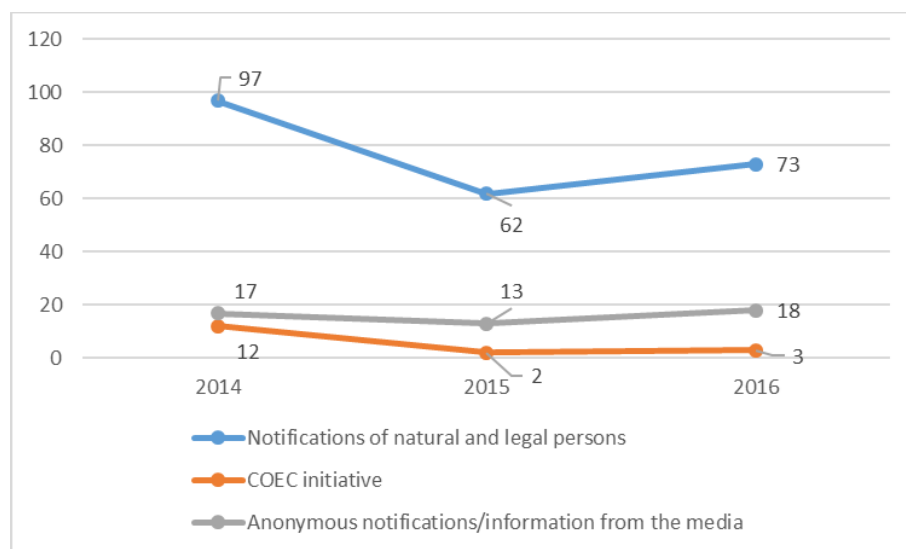
Figure 2. The COEC activities in 2014 – 2016

The number of COEC decisions after investigation in 2016 sharply increased compared to 2014 and 2015 and was accordingly 39 and 42 percent higher. During the year 2014 – 2016 the COEC mostly assessed (Chief Official Ethics Commission Annual Report 2016):

1. Failure to self-exclude when conflict of interest arise;
2. Misuse of office for obtaining personal benefit;
3. Misuse of official vehicles for private purposes;
4. Misuse of state or municipal property for private purposes;
5. Failure to act in compliance to disclosure requirements;
6. Breach of restriction to represent private groups or persons and protect their interests in state or municipal institutions;
7. Breach of restrictions after cease to hold public office.

It is to note that in 2015 the politicians made “only 1 per cent of all persons to whom the Law is addressed, but in 2015 the investigations regarding the conformity of the conduct of politicians with the provisions of the Law made even 43 per cent in the activities of the COEC” (Chief Official Ethics Commission Annual Report 2015).

Under the the Law on the Adjustment of Public and Private Interests in the Civil Service the COEC has a right to evaluate whether the assessment of the person’s activities as presented in the findings of the conducted investigation by other institutions is in compliance with the provisions of the Law (Law on the Chief Official Ethics Commission of the Republic of Lithuania 2008). In 2015 the COEC examined three times more investigations conducted by other institutions compared to 2014 and this number steadily grows (Chief Official Ethics Commission Annual Report 2014; Chief Official Ethics Commission Annual Report 2015; Chief Official Ethics Commission Annual Report 2016). The COEC investigated decisions on: failure to submit declaration on private interest, improper management of raised conflicts, issues related to using of the state or municipal property for private interests.



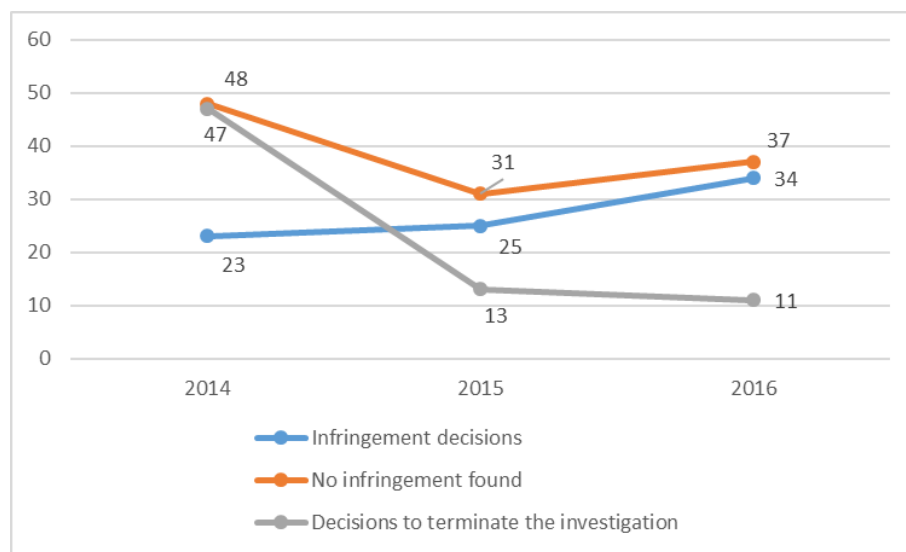
Source: created by the authors based on the COEC 2014 – 2016 annual reports

Figure 3. Legal basis for the COEC investigations in 2014 – 2016

The COEC investigates notifications, complaints and requests of natural and legal persons, but also has the right to start an investigation on its own initiative if the mass media, anonymous report or the other resource provides reasonable information that the Law had been breached (Law on the Chief Official Ethics Commission of the Republic of Lithuania 2008). The legal basis to start the major part of the COEC investigations were notifications of natural and legal persons (see Figure 3). The number of COEC’s investigations on its own initiative is still very low: from 2015 to 2016 only 5 investigation on this legal basis have been performed (see Figure 3) (Chief Official Ethics Commission 2016 Annual Report 2016). This is mainly influenced by the growing number of complaints, requests and notifications addressed

to the COEC and its strategy to focus more on preventive actions – encouraging the respective institutions to assess the level of its progress in the area of official ethics, identifying respective risk factors and educating institutions to conduct more internal investigations on the failure to submit declaration on private interest, improper management of raised conflicts, using of the state or municipal property in private interests by themselves (Law on the Chief Official Ethics Commission of the Republic of Lithuania 2008; Chief Official Ethics Commission 2015 Annual Report).

From 2013 to 2016 the annual COEC's budget increased by around 30 per cent, however it is still relatively small and does not correspond the COEC's growing responsibilities and the workload. The lack of financial and human resources is one of the reasons limiting the fulfilment of the COEC's mission and performing more monitoring activities. It is expected that the number of the COEC's preventive activities will increase in the coming years, which will also reduce the number of insubstantial complaints.



Source: created by the authors based on the COEC 2014 – 2016 annual reports

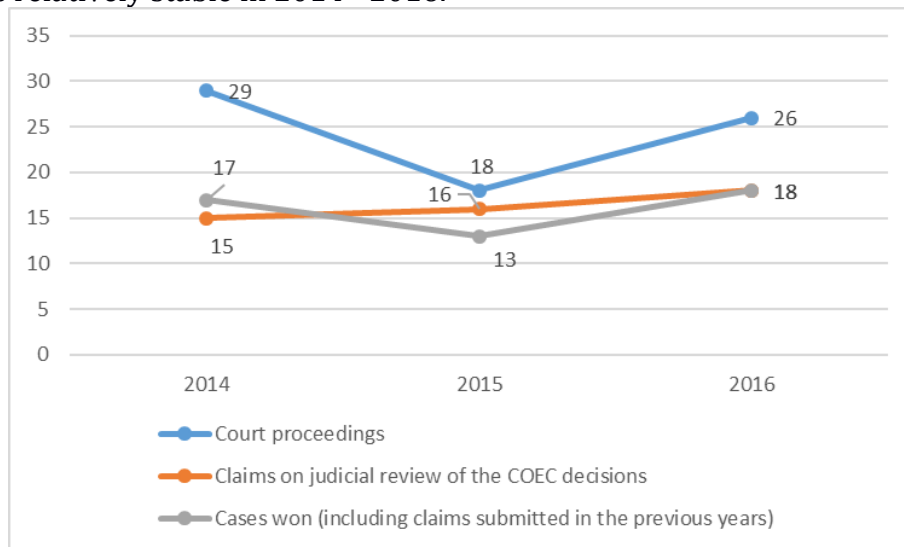
Figure 4. The COEC decisions in 2014 – 2016

Upon completion of the investigation, the COEC shall take a reasoned decision (Law on the Chief Official Ethics Commission of the Republic of Lithuania 2008):

- 1) to certify that a person has violated the provisions of the Law on the Adjustment of Public and Private Interests in the Civil Service, the Code of Conduct for State Politicians or any other legal act regulating the norms of official ethics and conduct;
- 2) to certify that a person has violated the provisions of the Law on Lobbying Activities;
- 3) to certify that a person has not violated the provisions of the Law on the Adjustment of Public and Private Interests in the Civil Service, the Code of Conduct for State Politicians or any other legal act regulating the norms of official ethics and conduct;
- 4) to certify that a person has not violated the provisions of the Law on Lobbying Activities or other legal acts;
- 5) to suspend the investigation;
- 6) to terminate the investigation.

After investigating 406 notification in 2016 the COEC adopted 34 decisions certifying violations of the Code of Conduct for State Politicians or any other legal act regulating the norms of official ethics and conduct, in 37 no infringements were found and in 11 cases the COEC terminated the investigations (see Figure 4) (Chief Official Ethics Commission Annual

Report 2016). The number of court proceedings and claims on judicial review of the COEC decisions was relatively stable in 2014 - 2016.



Source: created by the authors based on the COEC 2014 – 2016 annual reports

Figure 5. Review of the COEC decisions in administrative courts in 2014 -2016

Decisions of the COEC may be subject to the judicial review. The decisions of the COEC may be appealed against to Vilnius Regional Administrative Court within one month from the announcement of the decision or its delivery to the person concerned (Law on the Chief Official Ethics Commission of the Republic of Lithuania 2008). In 2015 the COEC was involved in 38 per cent less court proceedings concerning its decisions compared with 2014 and neither of them was changed by the courts in 2015 (see Figure 5) (Chief Official Ethics Commission Annual Report 2014; Chief Official Ethics Commission Annual Report 2015; Chief Official Ethics Commission Annual Report 2016). Almost every second COEC decision constituting violation is subject to judicial review. The growing number of cases won by the COEC shows that increasing number of court proceedings shall not be related to the quality of the COEC decisions, but the use of the right to judicial review of the parties affected by the negative decision.

Conclusions

Public sector or civil service objective activity to implement the state policy in a stable, solid and professional manner and to responsibly serve the society will be ethical, clear and defending public interests only when there will be pursuits to avoid the conflict of public and private interests on the basis of legal and ethical regulation. In case of such conflict, it must be timely and properly identified because it would allow to choose the most efficient solution ways or management measures to appease or eliminate the conflict.

In order to have the unacceptable and improper person's behavior, restricted by legal norms and condemned by the society, disappear, not only clear rules, transparent procedures and efficient sanctions must be introduced, but it also must be made sure that all this is implemented. Sanction inevitability is a necessary condition for a good result.

It must be noted that the conflict of public and private interests is not usually caused by the existence of a private interest but the collision and incompatibility of public and private interests. The conflict occurs when in a certain situation this private interest has direct or indirect impact on the performed official duties.

In order to solve such conflicts more efficiently, it is important to perceive the difference between such conflicts, because the type of conflicts will determine future strategy selection which will help to appease or eliminate those conflicts. No matter what conflict solution strategy is chosen, depending on the conflict nature, complexity and stability, the decision-making must be clear and fair.

Analyzing the conflict of interest, the following fields are assessed: activity areas, acting subject and interest conflict participants, because their analysis allows to identify the conflict better, to choose its solution strategy and to carry out control after its proper implementation.

As one of the major anti-corruption institution in Lithuania the COEC supervises transparency of civil service activities and decisions, implements measures on the prevention of breaches of institutional ethics. The growing number of claims and notifications received by the COEC not only shows the growing trust in this institution, but also limits the proper implementation of its mission. For this reason the COEC shall concentrate more on preventive measures, which in the future may have positive effect not only on reducing the number of violations of the Law on the Adjustment of Public and Private Interests in the Civil Service the Code of Conduct for State Politicians or any other legal act regulating the norms of official ethics, but also insubstantial complaints.

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